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August 18, 2021

By ECF

Honorable Edgardo Ramos
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: Michael Ramsaroop v. The Department of Education of the City of New York et al.
Civil Action No.: 20-CV-04947 (ER)

Dear Judge Ramos:

I am an Assistant Corporation Counsel in the office of James E. Johnson, Corporation Counsel of the City of New York, attorney for Defendants the Board of Education of the City School District for the City of New York, operating as the New York City Department of Education of the City of New York (“DOE”) and Principal Shirley Miller (“Miller”) (collectively, “Defendants”), in the above-referenced matter. I submit this letter on behalf of Defendants objecting to Plaintiff’s procedurally improper surreply letter dated August 12, 2021. *See* ECF Dkt. No. 45.

On July 30, 2021, Defendants’ motion to dismiss was fully submitted to the Court. *See* ECF Dkt. Nos. 39 – 44. Subsequently, Plaintiff filed a letter to the Court that constitutes an improper surreply. *See* ECF Dkt. No. 45. As an initial matter, the Court should not consider Plaintiff’s letter as Plaintiff failed to obtain leave of the Court to file a surreply. Moreover, the Court should reject Plaintiff’s surreply letter as Plaintiff has not identified any new issue to which they seek to reply regarding Defendants’ basis for their motion to dismiss. *In re Whole Foods Mkt. Grp., Inc.*, No. 15-CV-5838 (PAE), 2019 U.S. Dist. LEXIS 91733, *4-5 (S.D.N.Y. May 30, 2019) (quoting *United States v. Int ’I Bus. Machines Corp.*, 66 F.R.D. 383, 385 (S.D.N.Y. 1975)). Instead, Plaintiff’s surreply letter seeks to reassert prior arguments he has already made in his opposition. Even if Plaintiff had asserted a new opposition to Defendants’ arguments for dismissal, by failing to address Defendants’ arguments for dismissal Plaintiff has abandoned these claims and arguments and now improperly seeks to oppose these abandoned claims and arguments. *See Harley v. City of N.Y.*, No. 14-CV-5452 (PKC), 2016 U.S. Dist. LEXIS 16641, at *20 (E.D.N.Y. Feb. 10, 2016) (dismissing plaintiff’s claim where plaintiff’s opposition “ignored” defendant’s argument for dismissal).

Alternatively, should the Court consider Plaintiff's surreply letter, Defendants respectfully request until August 31, 2021 to file a substantive response to Plaintiff's surreply allegations and arguments.

I thank the Court for its consideration of this request.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "AS Mitchell".

Alison S. Mitchell
Assistant Corporation Counsel

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